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ANTI-CHINESE LEGISLATION IN AUSTRALASIA.

In 1855, a law was passed in Victoria, designated No. 39, by which the master of any ship carrying any male adult natives of China or its dependencies, or of any islands in the Chinese seas, or any persons born of Chinese parents, had to pay, on arrival at any port in Victoria, 10*l.* for each such person.* If any ship carrying any Chinese, as above defined, arrived at any port in Victoria with a greater proportion of passengers (apparently of any sort) than one to every ten tons of the ship's burden, the owner, charterer, or master was made liable on conviction to a penalty not exceeding 10*l.* for each passenger so carried in excess; also, power was given to the Governor, with the advice of the Executive Council, to levy such a sum from every Chinese, as above defined, as might be necessary for the payment of the officers employed in carrying out the act.¹ By No. 41 of 1857 of Victoria,² every Chinese residing in Victoria had to obtain a license, costing 1*l.*, and to be renewed every two months on payment of 1*l.* No. 80 of 1859³ repealed this provision and also the act of 1855, but re-enacted the latter in substance, with the addition of a 40*l.* entrance-fee for Chinese arriving otherwise than by ship, and substituted a 4*l.* annual residence-fee for the provisions of the act of 1857. By No. 132 of 1862,³ the provisions relating to residence-fees were repealed; and residence-fees do not again appear in the anti-Chinese legislation of Australasia.

Acts similar to that of 1855 in Victoria were passed by South Australia in 1857, No. 3,⁴ and by New South Wales in 1861, No. 3,⁵ — the latter also providing for an entrance-fee of 10*l.* for Chinese coming in otherwise than by sea, and enacting that no letters of naturalization should be issued to Chinese,—but these were repealed in 1861 and 1867 respectively. In Victoria, entrance-fees were suspended for two years by No.

* See p 71 of the Parliamentary blue-book printed in July, 1888, entitled *Correspondence relating to Chinese Immigration into the Australasian Colonies, with a Return of Acts passed by the Legislatures of those Colonies and of Canada and British Columbia on the Subject*. All subsequent references are to pages of that book.

1 p. 71.

2 pp. 71, 72.

3 p. 72.

4 p. 75.

5 p. 77.

170 of 1863,¹ reimposed by No. 200 of 1864,¹ and abolished by No. 259 of 1865.² No. 259 of 1865, or "The Chinese Immigrants' Statute, 1865," enacted, in the place of all previous anti-Chinese legislation, that the Governor in Council should have power to make such rules and regulations as may be deemed necessary for the registration of Chinese (defined as in 1855, except so as to exclude any child of British parents, wherever born), for their removal from whatever place they are in, for protecting them and adjusting their disputes, "and generally for [their] management and good government." Any one wilfully infringing any such rule or regulation was made liable to a penalty not exceeding 5*l*. This act, which is still law in Victoria if not repealed within six months, is the only instance in Australasian anti-Chinese legislation of similar powers being put in the hands of the Governor. Section 12 of this act provides that "no [Chinese] . . . shall be entitled to vote at the election of members for any mining board."

The last anti-Chinese act passed in Victoria is "The Chinese Act, 1881,"³ assented to December 24 of that year. Its principal features are, like those of the original act of 1855, a limitation of the number of Chinese a vessel can carry and an entrance-fee. As most of the other Australasian Colonies passed acts very much like it, I shall give its provisions in some detail. The second section provides that for every Chinaman in excess of the proportion of one to every hundred tons of the ship's burden, brought into any port in Victoria, the owner, master, or charterer of the vessel bringing him shall be liable to a penalty of 100*l*. Section 3 imposes an entrance-fee of 10*l*. to be paid by the master of the vessel for every Chinese before he is permitted to land, the Chinese receiving a certificate of the payment from the officer to whom payment is made, and lays a penalty on the master of 50*l*. plus the entrance-fee for every Chinese landing or escaping from the vessel before such payment, or before the master delivers to the proper officer a list of the Chinese on board according to a provision of the Statute of 1865. Section 4 imposes a penalty of 10*l*., or, in default of payment, imprisonment for twelve months or till the fine is paid, upon any Chinese entering the

¹ p. 72.² pp. 72, 73.³ pp. 73, 75.

colony by sea, or attempting to do so, without payment of the entrance-fee. Sections 5 and 7 exempt British subjects, and crews in the performance of their duties in connection with their vessels, from the operation of the act; and Section 6 exempts Chinese duly accredited to the colony by the government of China, or sent by the English government on any special mission, from having to pay the entrance-fee. Section 8 prevents the evasion of the act by transshipment of Chinese from one vessel to another. Section 9 puts on the defendant in any proceeding under the act the burden of proving that he is exempt from its operation. Sections 11, 12, and 13 enact that no Chinese (notwithstanding they may be rate-payers) shall vote at any municipal or parliamentary election unless they are British subjects, and that their names shall be omitted from the voting-lists unless they are known to the officials to be British subjects or shall be proved to be such.

Acts similar to "The Chinese Act of 1881" of Victoria, of which I have just given an abstract, were passed by the other Australasian Colonies, as follows:—

Queensland, August 20, 1877, No. 8,¹ and March 10, 1884, No. 13;² South Australia, November 18, 1881, No. 213³ (not applicable to the northern territory); New South Wales, December 6, 1881, No. 11;⁴ New Zealand, 1881, No. 47;⁵ Western Australia, July 28, 1886, No. 13;⁶ Tasmania, November 7, 1887, No. 9.⁷ The Chinese question has never become a pressing one in Fiji.*

These acts give a variety of definitions of "Chinese," but practically they are all nearly equivalent to that adopted in New South Wales,⁸—"any person of the Chinese race." The entrance-fee is everywhere fixed at 10*l.*, except in Queensland, where it is 30*l.*⁹ The Statute of 1881 in Queensland provided for the refunding of the entrance-fee on certain conditions,¹⁰ but that provision was repealed in 1884.¹¹ New South Wales¹² and

* p. 33. Sir J. B. Thurston writes from the Government House, Fiji, April 11, 1888, that "there are very few Chinese subjects in this colony, not exceeding, perhaps, thirty in all. They are chiefly occupied as small traders and gardeners. Their conduct is, on the whole, inoffensive, and no exceptional legislation whatever exists affecting them."

1 p. 80.

2 p. 81.

3 p. 76.

4 p. 78.

5 p. 86.

6 p. 84.

7 p. 82.

8 p. 78.

9 p. 82.

10 p. 81, § 7.

11 p. 81, § 2.

12 p. 78.

Tasmania,¹ like Victoria, allow only one Chinaman to every one hundred tons of a vessel's burden; West Australia² and Queensland³ allow one to every fifty tons; and the rest, one to every ten tons.⁴ All impose a penalty of not over 200*l.* upon the master if he does not produce a list and, except in Victoria, a brief description of all the Chinese on board.⁴ In all these acts, it is stated that the fine imposed on a Chinaman for entering or attempting to enter without paying his entrance-fee shall be *in addition to* the entrance-fee, except in the case of Victoria.⁵ *Quære* how the Victoria Act is construed in that respect. The acts of Queensland,⁶ New South Wales,⁷ New Zealand,⁸ Western Australia,⁹ and Tasmania,¹⁰ make provision for the seizing of the vessel, on default of the master in allowing illegal landing of Chinese, and for holding her, with power to sell under certain conditions.* In New Zealand and Tasmania, as in Victoria, there is no entrance-fee if the Chinaman comes otherwise than by vessel. In the two former cases, this omission can make no great difference; but it is singular in the case of Victoria, especially when we remember that the Statute of 1859 *supra*, in Victoria, put the fee for such entrance at 40*l.*¹¹

All the colonies have provisions for a summary enforcement of the penalties imposed by these acts,¹² the magistrates before whom the case is brought deciding "upon their own view and judgment"¹³ whether the defendant is a Chinaman or not. All except Victoria give certificates of temporary exemption from the operation of the acts to Chinese leaving the colony

* In Queensland (p. 80), if the master neglects to pay the entrance-fee, or unlawfully lands, or permits to land, any Chinese, "in addition [to a penalty on the master], the vessel shall be forfeited, and may be seized, condemned, and disposed of in like manner as ships forfeited for a breach of any law relating to the customs." So also in Tasmania (p. 83) and New Zealand (p. 87). In New South Wales, it is lawful that any vessel, the master of which is held by the Treasurer of the colony "to have committed an offence or be a defaulter" under the Chinese act, should be detained until the master gives bond with sureties for the payment of any penalty and any other sums found due from him; and, if he does not give bond, nor pay when convicted, the vessel may be seized, and condemned or forfeited as for a breach of the customs laws. Western Australia has similar provisions, but neither Victoria nor South Australia.

1 p. 82. 2 p. 84. 3 pp. 76, 82. 4 pp. 73, 76, 78, 80, 82, 84, 86.

5 pp. 77, 78, 81, 83, 85, 87. 6 p. 80. 7 p. 79. 8 p. 86. 9 pp. 84, 85. 10 p. 83.

11 p. 72. 12 pp. 73, 77, 79, 82, 84, 86, 87. 13 pp. 73, 77, 79, 81, 83, 85, 87.

for a time specified in the certificate.^c Western Australia exempts from the operation of her anti-Chinese act all laborers under a previously written agreement with their employers,² — an exemption which compares curiously with our laws against the importation of contract labor. South Australia³ and Tasmania⁴ make it a condition of the entrance of a Chinaman into their territory that he shall have been vaccinated. The restrictions on the right to vote, which occur in Sections 11, 12, and 13 of the “Chinese Act of 1881,” and in Section 10 of the act of 1865, in Victoria, are not found in the other acts I have cited, though there are similar provisions in the anti-Chinese act passed in New Zealand this year.⁵ It may be that the general laws of the other colonies on the subject of voting provide similar restrictions.⁶ I have found no other instance of the law of New South Wales of 1861,⁷ repealed in 1867, that no letters of naturalization shall be issued to Chinese. There was a law in Queensland, in 1877,⁸ that Asiatic and African aliens should have to pay an “increased fee for Miners’ Rights and Business Licenses issued under the Gold Fields Act.” This law was repealed in 1878, when it was enacted instead “that Chinese should not be allowed to mine on the Gold Fields until after the expiration of three years from the date of their first proclamation, unless the gold field had been discovered by an Asiatic or African alien.”⁹ There are differences between the acts in the different colonies, in matters of detail and in the amounts of the pecuniary penalties imposed; but I have touched upon all the important points.

In 1888, the anti-Chinese legislation of Australia was made geographically complete by the passage, on March 1, by South Australia, of a bill imposing an entrance-fee of 10*l.* upon all Chinese landing in the northern territory, and a quarantine of twenty-one days upon all vessels arriving in that territory from Chinese ports.¹⁰

The report received last spring of a treaty concluded between the United States and China by which the Chinese were to be kept out of this country increased the anti-Chinese

1 p. 77, 79, 81, 83, 85, 87. 2 p. 39, No. 72; p. 40, Enclosures 1 and 2; p. 85.

3 p. 83. 4 p. 77. 5 Cited more fully below. 6 p. 34, Enclosure in No. 64.

7 p. 77. 8 p. 14, Enclosure in No. 22. 9 p. 15. 10 p. 3, No. 5.

feeling in Australasia.¹ The excitement in Sydney ran so high that the authorities overstepped the law² in preventing the landing of the Chinese on board the steamer, "Afghan" for fear of a riot.³ In New Zealand and New South Wales, acts were passed (and subsequently assented to)⁴ putting still closer restrictions on Chinese immigration than had formerly existed in those colonies. "The Chinese Immigrants' Amendment Act, 1888," of New Zealand,⁵ lowered the number of Chinamen a vessel could carry to one for every one hundred tons⁵ (instead of ten), repaired some oversights in the act of 1881, and provided that Chinese should not vote at the "election of a member of a local authority."⁶ The New South Wales act of 1888 raised the entrance-fee to 100*l.*, and provided an indemnity for the government in case the Supreme Court should declare the action of the ministers, in not allowing the Chinese on the "Afghan"⁷ to land, to be illegal.⁸ New Zealand also republished proclamations declaring China, Hong Kong, Sumatra, Java, Mauritius,⁹ and the Islands of the Eastern Archipelago, to be "infected places" under "The Public Health Act, 1876,"¹⁰ giving notice¹¹ that strict quarantine would be enforced against all vessels from, or having touched at, any of those places, or having received any person or thing whatsoever from or out of any vessel coming from or having touched at any of those places. The motive for republishing these proclamations was the same as that which caused the act to be passed,¹²— simply to keep out the Chinese.

The most interesting effect of the anti-Chinese excitement was a conference of delegates from all the Australasian Colonies except New Zealand and Fiji, upon the subject of Chinese immigration, held in Sydney on the 11th, 12th, and 13th of last June,¹³ in which the opinion was unanimous "that the

¹ p. 2, No. 3; p. 13, No. 21; p. 11, No. 14 A; p. 21, No. 39 and Enclosure, and No. 37; p. 32, No. 61; p. 42, No. 76 A; p. 52, Enclosure in No. 87; p. 49, No. 87; and other letters and telegrams.

² p. 27, No. 48. ³ p. 26, No. 45. Cf. p. 27, Nos. 46, 47; and cf. also p. 51, No. 87.

⁴ p. 31, No. 58; p. 41, No. 73; p. 30, No. 54. ⁵ p. 53. ⁶ p. 54.

⁷ For short history of the Afghan matter, see p. 46, No. 83, and p. 38, No. 71.

⁸ p. 26, No. 45. ⁹ Since declared clean. ¹⁰ pp. 55, 56. ¹¹ p. 55.

¹² p. 51, No. 87. ¹³ p. 43, No. 78, gives a report of the conference.

desired restriction can be best secured through the diplomatic action of the Imperial Government and by uniform Australasian legislation." There was a unanimous resolve "to consider a joint representation to the Imperial Government for the purpose of obtaining the desired diplomatic action"; but it was found impracticable¹ to adopt the suggestion made by the Imperial Government² that the restriction imposed should be of a general nature, so as not to offend the Chinese and interfere with diplomatic action. The advice given by the Imperial Government that anti-Chinese legislation should be suspended pending the negotiation³ was not followed, the conference, with the exception of Tasmania and Western Australia, being of opinion that the desired uniform Australasian legislation should include a limitation of one Chinese to every five hundred tons of a vessel's burden,⁴ that Chinese should not be allowed to pass from one colony to another without the consent of the latter,⁴ and that the entrance-fee should be abolished.⁵ It was understood that, if the draft bill should be adopted by two other colonies, New South Wales would make its legislation substantially conform to it, all the colonies reserving the right to make variations in matters of detail;⁶ but in the mean time New South Wales kept on, and passed the bill I have mentioned above, on June 15.⁷

On June 22, Lord Salisbury, at the conclusion of a letter⁸ admirably summing up the situation, wrote to Sir J. Walsham, "I have to instruct you to place yourself without delay in communication with the Tsung-li Tamên, and urge upon them . . . that . . . the Chinese Government should adopt a course similar to that which they followed in the case of the United States, and enter into a convention with Her Majesty's Government to the effect indicated in the enclosed Resolutions of the Conference held at Sydney."

JOSEPH LEE.

¹ Cf. p. 41, No. 75. ² p. 35, No. 69. ³ p. 43, No. 77. ⁴ p. 48.

⁵ p. 49. ⁶ p. 45, No. 80. ⁷ p. 45, No. 81. ⁸ p. 49, No. 85.